LAW SOCIETY

v.

SEAH PONG TSHAI

HIGH COURT, SINGAPORE
YONG PUNG HOW CJ
LAI KEW CHAI J
LP THEAN J
[ORIGINATING SUMMONS NO. 368 OF 1990]
29 OCTOBER 1991

LEGAL PROFESSION: *Disciplinary action - Complaint to Law Society - Charge preferred against solicitor - Contention by complainant varied from words of charge - Effect of - Legal Profession Act (Cap. 161), ss. 80, 87(2), 95.*

A complaint was lodged against the respondent S an advocate and solicitor.

Whereby complainant alleged that S refused to refund his money while S denied receiving any such payment.

The disciplinary committee of the Law Society accepted the evidence of the complainant and a charge was preferred against S determining that there was cause of sufficient gravity for disciplinary action under s. 80 of the Legal Profession Act. (The Act)

In these proceedings, S was ordered to show cause why he should not be dealt with under s. 80 of the Act.

Held:

[1] It was evident that the charge framed against S was different from the complaint both in form and substance. The complainant was not concerned with the question whether S denied receipt of the monies and only complained that S refused to refund the said sum.

[2] In this case, the charge preferred against S before the disciplinary committee was never inquired into by the inquiry committee. The committee only inquired into the complaint contained in the letter and on which the disciplinary committee was appointed.

[3] It therefore had no jurisdiction to hear and investigate anything else other than the complaint. The disciplinary committee was in error in hearing and determining the charge and making a determination therein. That error was fatal to the entire proceedings.

[4] The determination of the disciplinary committee was not sustainable as there was a fundamental error in the proceedings before the disciplinary committee, which vitiated the entire proceedings.

[The order nisi for the respondent to show cause is therefore discharged.]

Cases referred to:

Re An Advocate & Solicitor [1978] 2 MLJ 7 ***(cons)***
Re Lim Chor Pee [1991] 2 MLJ 154 ***(cons)***
Issac Paul Ratnam v. Law Society of Singapore [1976] 1 MLJ 1985 ***(cit)***

Legislation referred to:

Legal Profession Act (Cap 161 1985 Edn.) [Sing], ss. 80(2), (b), 82(1), (3), 83(5), (6), 84, 86, 87(1), Part VII
Misuse of Drugs Act (Cap 185) [Sing], s. 5(a)
Motor Vehicles (Third Party Risks & Compensation) Act (Cap 88) [Sing], s. 17(3)

For the appellant - Madan D T Assomull
For the respondent - in person (Seah Pong Tshai)

JUDGMENT

LP Thean J:

In these proceedings, Seah Pong Tshai (the respondent), an advocate and solicitor of the Supreme Court, was ordered to show cause why he should not be dealt with under s. 80 of the Legal Profession Act (Cap. 161, 1985 edn.) (the Act). The proceedings arose from a determination by the disciplinary committee, appointed by the Chief Justice under s. 87(1) of the Act, that in relation to a complaint dated 22 January 1987 made by one Ang Beng Kheng (the complainant) to the Law Society of Singapore (Law Society), cause of sufficient gravity for disciplinary action existed under s. 80 of the Act. The determination of the disciplinary committee was made on the basis of a charge (which we shall set out shortly) framed by the Law Society which the disciplinary committee found had been proved. We held that the determination was not sustainable as there was a fundamental error in the proceedings before the disciplinary commitee which, in our view, vitiated the entire proceedings. We accordingly discharged the *order nisi* and the circumstances made no order as to costs. We now give our reasons.

The relevant facts that gave rise to these proceedings were briefly these. The respondent was at the material time practising under the name and style of PT Seah & Co., at 865, Mountbatten Road, #06-21, Katong Shopping Centre, Singapore 1543. On or about 16 December 1987 he was instructed to act for the complainant in the criminal case, DAC 11569/87, in which the latter was charged with an offence under section 5(a) of the Misuse of Drugs Act (Cap 185) and which was coming on for mention in the District Court on 19 December 1987. However, on the date of mention when the complainant saw the respondent in Court he terminated the services of the respondent. On these facts there was no dispute. The dispute between the complainant and the respondent was with respect to the payment of a sum of $1,000 alleged to have been made by the complainant to the respondent on 17 December 1987 to account of the latter's fees.

The evidence of the complainant is this. On 16 December 1987 he went to the office of the respondent and saw the respondent's clerk, Thomas Toh (Toh), and showed Toh a copy of the charge and the result of the urine test. Toh asked for a sum of $5,000 as fees and later agreed to reduce it to $4,000 with the respondent's consent. It was not clear whether the complainant saw the respondent at that time. Toh further asked the complainant to pay a deposit of $2,000, but no amount was paid on that day. On the following day, the complainant went to the respondent's office and paid a deposit of $1,000, which was received by Toh. The respondent agreed to accept this amount provided that another sum of $1,000 would be paid on the date of mention for the case. The complainant asked Toh for a receipt, but the latter merely acknowledged receipt of the sum of $1,000 on a blank form of warrant to act which was given to the complainant. On 18 December 1987 the complainant retained the services of another lawyer called Mr Guru and at the same time instructed him to recover the sum of $1,000 from the respondent. On 19 December 1987, which was the date of mention for the case, one Mr. Dhanwant Singh from Mr. Guru's office appeared in Court on behalf of the complainant. The complainant saw the respondent in Court and terminated the latter's services and asked for the refund of the sum of $1,000. The respondent refused. Later the complainant went to the office of the respondent, again trying to obtain a refund of the sum of $1,000, but he was unsuccessful.

The respondent denied that he received any payment from the complainant. He said that the complainant saw him in his office and retained him for the case. He asked for a deposit of $500 to be paid on the date of mention, and on that date he went to court and he saw the complainant. The complainant, however, did not pay the sum of $500. The complainant told him that M/s Guru & Partners had been engaged to represent the complainant and terminated his services.

The disciplinary committee accepted the evidence of the complainant and found that the sum of $1000 was paid to the respondent on 17 December 1987. On the evidence before it, the disciplinary committee was entitled to arrive at that finding, and we accepted it.

About one month later, on 22 January 1988, the complainant wrote the following letter to the Law Society:

> Dear Sirs,
>
> *Re: Complaint of Cheating by a Lawyer*
>
> I, Ang Beng Kheng, i.c. 1410117-I, sincerely wish to bring this matter regarding this lawyer, P.T. Seah & Co., solicitor and advocate from 14 Collyer Quay 10-04, Singapore Rubber House, Singapore 0104, that he refused to refund $1000, part of legal fee, which I paid to his assistant Mr Thomas in his office on 17 December 1987 in the presence of my friend Petros Lek. That amount was part of the payment for him to represent me in court for an innocent case which I was charged.
>
> However, I terminated his service on 19 December 1987 in the morning before his first appearance in Court because it was trickery and I was overcharged. Upon paying the $1000 legal fee, he only gave me a plain warrant to act receipt for me to fill up the necessary entries without his signature. When I asked for a payment receipt, Mr Thomas only wrote on top of the warrant to act form saying that it was the evidence for accepting my fee. He also demanded for extra $1000 if I wanted a receipt. The total fee he asked was $4000 whereas the present lawyer I engaged is $2000.
>
> Since he is overcharging me and its service is trickery I wanted to take back some of my hard earned money after deducting whatever cost he might have incurred during that three days of service 17 December 1987; 18 December 1987; have 19 December 1987. It is really too much for him to forfeit all my initial fee - $1000 without even attending any of the Court mention. I tried in vain calling him and finally went to his office but he refused to refund part of my legal fee. Instead he sarcastically told me to complain to any sources or authorities I wish. I consulted my present lawyer but was told that he declined taking my money.
>
> Please help me to settle this matter carefully and earlier because he might not admit taking my money and also the innocent case would be up for hearing soon. I put effort in making enquires to find where and who should I bring this matter to their attention. And here I found that the Law Society should be the right authorities to seek help. So I wrote and intend to come if necessary.
>
> I greatly appreciated and grately ***(sic)*** if you could look into this matter. Hoping to hear from you soon. I hereby enclose the warrant to act form which I received upon payment of my hard-earned, legal fee.
>
> Yours faithfully,
> sgd Ang Beng Kheng

Though the complainant alleged in the letter that he was overcharged and there was "trickery", he did not elaborate or explain what he meant by "trickery". Nor did he say in what way or manner he was tricked: whether he was tricked into retaining the respondent to represent him or was tricked into paying the sum of $1,000 as part of the fees. It seems to us that the

complainant having paid to the respondent the sum of $1,000 on 17 December 1987 and terminated the latter's service two days later complained that that amount for the "three days service" was an overcharge, and such service was therefore a "trickery" in relation to the amount paid: there was either no service at all or hardly any service that could justify the payment of the sum of $1,000. We think that it was in that context what the complainant meant by the word "trickery". We do not think it is fair or right to attribute to the word, in that context, a more serious or any sinister connotation. Essentially, the complaint was that the respondent, having been paid by the complainant a sum of $1,000 as part of his fees, did not perform any service that justified that sum and refused to refund it to the complainant.

Before the disciplinary committee, the charge preferred against the respondent was as follows:

> You, Seah Pong Tshai, an advocate and solicitor, are charged that on or about 17 December 1987, having received the sum of $1,000 in cash as part payment of costs from one Ang Beng Kheng, **falsely denied the receipt of the said sum of $1,000** and you are thereby guilty of grossly improper conduct in the discharge of your professional duty under section 80(2), (b) of the Legal Profession Act (Chapter 161).
>
> (The emphasis is ours.)

It is clearly evident that the charge so framed was different from the complaint both in form and in substance. The complainant did not complain that respondent "falsely denied the receipt of the said sum of $1,000. No doubt it is true that the complainant in his letter said that he consulted his "present lawyer" - that presumably was Mr. Guru - and was told that the respondent denied taking his money, and that he therefore sought the Law Society's assistance to settle the matter "carefully earlier because (the respondent) might not admit taking any money". But these statements, in the context of the latter, were made by the way and were purely incidental to the complaint. The complaint was not that the respondent had falsely denied receipt of the sum of $1,000 but that the respondent had overcharged him and had refused to refund the amount. That, in our opinion, was the *gravamen* of the complaint. We do not think that the complainant was concerned with the question whether or not the respondent denied receipt of that amount; his concern was the respondent's refusal to refund that amount, and it was for that purpose that he wrote to the Law Society. The Law Society was in error in framing such a charge and bringing it before the disciplinary committee for hearing and investigation, as the disciplinary committee had no jurisdiction over such a matter and to make a determination thereon.

A careful review of the relevant provisions of the Act amply supports this conclusion. Under s. 82(1), any application by any person that an advocate and solicitor be dealt with under Part VII of the Act and any complaint of the conduct of an advocate and solicitor in his professional capacity shall in the first place be made to the Law Society, and the Council of the Law Society (the Council) shall refer the application or complaint to the Chairman of the inquiry panel. The chairman will then under s. 82(3) constitute an inquiry committee to inquire into the application or complaint. Before the inquiry committee commences its hearing, it is required under s. 83(5), *inter alia*, to post or deliver to the advocate and solicitor concerned:

(i) copies of any written application or complaint or of any statutory declarations or affidavits that have been made in support of the application or complaint, and

(ii) a notice inviting the advocate and solicitor concerned

within a certain period as may be specified in the notice, to give to the inquiry committee any written explanation he may wish to make and to advise the inquiry committee if he wishes to be heard by the inquiry committee. After the hearing, the inquiry committee will then make

a report to the Council, and under s. 83(6) the report shall, *inter alia,* deal with the question of the necessity or otherwise of a formal investigation by a disciplinary committee. Under s. 84, the Council shall consider the report and make its determination as provided therein according to the circumstances of the case. Where the Council determines that there should be a formal investigation, then under s. 86 it shall forthwith apply to the Chief Justice to appoint a disciplinary committee 'which shall hear and investigate the matter'. The 'matter' must be the application or complaint that has been received by the Law Society, that has been inquired into and reported upon by the inquiry committee and on which the Council has made a determination.

A case directly in point in *Re An Advocate & Solicitor* [1978] 2 MLJ 7. There, the statement of case filed by the Law Society against the advocate and solicitor concerned contained two complaints against him, namely, (i) payment of money to a tout for bringing in accident cases, and (ii) receiving costs other than taxed costs from accident victims contrary to s. 17(3) of the Motor Vehicles (Third Party Risks & Compensation) Act (Cap 88). Both the complaints were heard and investigated by the disciplinary committee which made findings thereon and determined that cause of sufficient gravity existed for disciplinary action. Before the High Court it was contended that only the first complaint could be heard and investigated by the disciplinary committee as that was the only matter on which the Council had determined that there should be a formal investigation as evidenced by its letter to the advocate and solicitor. Accordingly, the second complaint could not be lawfully heard and investigated by the disciplinary committee. This point was upheld by the High Court. Wee Chong Jin CJ, who delivered the judgment of the Court, said on p. 11:

> In our judgment the point taken by Mr. Smith is a valid one. Consequent on this, therefore, all or any of the matters relating to the receiving and accepting payment of monies from accident victims other than taxed costs could not properly have been heard by the disciplinary committee and hence are not properly before us. The only matters which the disciplinary committee could have heard against the respondent, which we therefore can now entertain, are matters relating to payment of monies to a tout in bringing accident cases. This fundamental error on the part of the Disciplinary Committee vitiates the whole of its findings as recorded in sub paras. 13(v), 13(vi), 13(vii) and 13(viii) of the Report and renders them a nullity and of no effect. The finding of the Disciplinary Committee on the charge against the respondent under s. 84(2), (b) cannot therefore be supported on the grounds as stated in subpara. 13(ix) of the Report.

More recently the same point was decided in the case of *Re Lim Chor Pee* [1991] 2 MLJ 154. There, the Attorney-General acting under s. 82(2) of the Act referred to the Law Society certain information touching upon the conduct of an advocate and solicitor in his professional capacity, and one of the charges preferred by the Law Society against the advocate and solicitor was not contained in the information. The High Court held, *inter alia,* that the Law Society could not frame a charge not contained in the information and the charge therefore failed. The relevant portion of the judgment on p. 163 stated thus:

> Quite apart from what we have held, there is a fatal objection to this charge. The information referred by the Attorney-General to the Law Society on 2 March 1983 did not contain any allegation that the respondent had wilfully evaded payment of tax in respect of the sum of $85,000. Counsel for the Law Society relied on Keith Tay's report which was part of the information. However, this report also did not contain any specific reference to the tax evasion of the $85,000. Consequently, the subject matter of this charge was not contained in and was not part of the information referred by the Attorney-General to the Law Society, was not and could not be a subject of inquiry by the inquiry committee and did not fall within the scope of the notice given by the inquiry committee to the respondent under what was then s. 87(5) of Cap 217. The provision of s. 87(5), so far as relevant, is as follows:

Before the Inquiry Committee commences its hearing in respect of any matter

(a) the inquiry committee shall post or deliver to the advocate and solicitor concerned:

(i) ...

(ii) a notice inviting the member concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give to the inquiry committee any written explanation he may wish to offer and to advise the inquiry committee if he wishes to be heard by the committee;

In our judgment, the Law Society cannot frame a charge which was not contained in the 'information' referred by the Attorney-General to the Law Society and notice of which was not given by the inquiry committee under that section: see *Isaac Paul Ratnam v. Law Society of Singapore* [1976] 1 MLJ 195.

The decision of the Privy Council in *Issac Paul Ratnam* case was relied by the High Court in *Re Lim Chor Pee*, and is clearly of assistance in the instant case. In that case, the Attorney-General complained to the Law Society that Issac Paul Ratnam ('Ratnam') dishonestly instigated the disposal of certain property of a company and also caused certain files of the company to disappear. The Law Society referred the complaint to the inquiry committee which then inquired into it and reported on it to the Council. The Council determined that there should be a formal investigation and applied to the Chief Justice to appoint a disciplinary committee, and a disciplinary committee was appointed to investigate the complaint. Soon thereafter, Ratnam was convicted in the magistrate's Court of the charge of dishonestly instigating the removal of files (which was one of the complaints made by the Attorney-General). Immediately after his conviction, the inquiry committee acting on its own motion under what was then s. 87(1), (b) of the Act (Cap 217) inquired into the matter of his conviction but before so doing did not give any notice to him under what was then s. 87(5) of the Act. The inquiry committee reported on the matter to the Council, and subsequently the same disciplinary committee was appointed to hear and investigate the matter of his conviction. It was held by the Privy Council that this failure to give notice to Ratnam vitiated the second inquiry of the inquiry committee. Lord Simon of Glaisdale, in delivering the judgment of the Board, said, at p. 200:

Section 87(5) must be construed as either imperative or directory for all cases which it affects, as the citation from Lord Penzance's judgment suggests. Although the instant appellant suffered no prejudice nor failure of natural justice there could well be cases where serious prejudice might be suffered and omission to give notice might well result in such a failure. It is no light matter for a professional man to have to appear before a disciplinary committee of his professional body. The person who is the subject matter of enquiry might well have such an answer as to ensure that the report of the inquiry committee so exculpates him that the Law Society may determine either that no formal investigation is necessary under s. 88(1), (a) or that the case may be met by a small penalty under s. 88(1), (b) or s. 89.

The instant case was certainly much stronger. The subject matter of the charge preferred against the respondent before the disciplinary committee was never inquired into by the inquiry committee. What was referred to and inquired into by the inquiry committee was the complaint as contained in the letter of 22 January 1988 of the complaint. That was the complaint on which the inquiry committee reported to the Council and it is in respect of that complaint that the Council applied to the Chief Justice to appoint a disciplinary committee, and the disciplinary committee was so appointed to hear and investigate that complaint; it had no jurisdiction to hear and investigate anything else other than the complaint. The disciplinary committee was in error in hearing and investigating the charge and making the

determination thereon. The error, in our judgment, was unquestionably fatal to the entire proceedings. The *order nisi* that the respondent show cause must therefore be discharged, and we so ordered.

Also found at [1992] 1 CLJ 309